

Senate Amendment 5208

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1 1 Amend Senate File 2332 as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <Section 1. NEW SECTION. 86C.1 TITLE.
1 5 This chapter shall be known as the "Iowa Worker
1 6 Adjustment and Retraining Notification Act".
1 7 Sec. 2. NEW SECTION. 86C.2 DEFINITIONS.
1 8 For the purposes of this chapter:
1 9 1. "Aggrieved employee" means an employee who has
1 10 worked for the employer ordering the plant closing or
1 11 mass layoff and who, as a result of the failure by the
1 12 employer to comply with section 86C.3, did not receive
1 13 timely notice either directly or through the
1 14 employee's representative.
1 15 2. "Department" means the department of workforce
1 16 development.
1 17 3. "Employee" means a worker who may reasonably
1 18 expect to experience an employment loss as a
1 19 consequence of a proposed plant closing or mass layoff
1 20 by an employer.
1 21 4. "Employer" means a person who employs
1 22 twenty-five or more employees, excluding part-time
1 23 employees.
1 24 5. "Employment loss" means an employment
1 25 termination, other than a discharge for cause,
1 26 voluntary separation, or retirement; a layoff
1 27 exceeding six months; or a reduction in hours of more
1 28 than fifty percent of work of individual employees
1 29 during each month of a six-month period.
1 30 6. "Mass layoff" means a reduction in employment
1 31 force that is not the result of a plant closing and
1 32 results in an employment loss at a single site of
1 33 employment during any thirty-day period of twenty-five
1 34 or more employees, other than part-time employees.
1 35 7. "Part-time employee" means an employee who is
1 36 employed for an average of fewer than twenty hours per
1 37 week or an employee, including a full-time employee,
1 38 who has been employed for fewer than six of the twelve
1 39 months preceding the date on which notice is required.
1 40 8. "Plant closing" means the permanent or
1 41 temporary shutdown of a single site of employment of
1 42 one or more facilities or operating units that will
1 43 result in an employment loss for twenty-five or more
1 44 employees, other than part-time employees.
1 45 9. "Representative" means an exclusive
1 46 representative of employees within the meaning of
1 47 section 9(a) of the federal National Labor Relations
1 48 Act, 29 U.S.C. } 151 et seq., and the federal Railway
1 49 Labor Act, 45 U.S.C. } 151 et seq.
1 50 10. "Single site of employment" refers to a single
2 1 location or a group of contiguous locations, such as a
2 2 group of structures that form a campus or business
2 3 park or separate facilities across the street from
2 4 each other.
2 5 Sec. 3. NEW SECTION. 86C.3 NOTICE ==
2 6 REQUIREMENTS.
2 7 1. a. An employer who plans a plant closing or a
2 8 mass layoff shall not order such action until the end
2 9 of a thirty-day period which begins after the employer
2 10 serves written notice of such action to the affected
2 11 employees or their representatives and to the
2 12 department. However, if an applicable collective
2 13 bargaining agreement designates a different notice
2 14 period, the notice period in the collective bargaining
2 15 agreement shall govern.
2 16 b. An employer who has previously announced and
2 17 carried out a short-term mass layoff of six months or
2 18 less which is extended beyond six months due to
2 19 business circumstances not reasonably foreseeable at
2 20 the time of the initial mass layoff is required to
2 21 give notice when it becomes reasonably foreseeable
2 22 that the extension is required. A mass layoff
2 23 extending beyond six months from the date the mass
2 24 layoff commenced for any other reason shall be treated

2 25 as an employment loss from the date of commencement of
2 26 the mass layoff.

2 27 c. In the case of the sale of part or all of a
2 28 business, the seller is responsible for providing
2 29 notice of any plant closing or mass layoff which will
2 30 take place up to and on the effective date of the
2 31 sale. The buyer is responsible for providing notice
2 32 of any plant closing or mass layoff that will take
2 33 place thereafter.

2 34 2. a. Notice from the employer to the affected
2 35 employees or their representatives and to the
2 36 department shall be in written form and shall contain
2 37 the following:

2 38 (1) The name and address of the employment site
2 39 where the plant closing or mass layoff will occur, and
2 40 the name and telephone number of a company official to
2 41 contact for further information.

2 42 (2) A statement as to whether the planned action
2 43 is expected to be permanent or temporary and, if the
2 44 entire plant is to be closed, a statement to that
2 45 effect.

2 46 (3) The expected date of the first employment loss
2 47 and the anticipated schedule for employment losses.

2 48 (4) The job titles of positions to be affected and
2 49 the names of the employees currently holding the
2 50 affected jobs.

3 1 b. The notice may include additional information
3 2 useful to the employees, such as information about
3 3 available dislocated worker assistance, and, if the
3 4 planned action is expected to be temporary, the
3 5 estimated duration, if known.

3 6 3. Any reasonable method of delivery to the
3 7 affected employees or their representatives, and the
3 8 department which is designed to ensure receipt of
3 9 notice of at least thirty days before the planned
3 10 action is acceptable. In the case of notification
3 11 directly to affected employees, insertion of notice
3 12 into pay envelopes is a viable option.

3 13 Sec. 4. NEW SECTION. 86C.4 NOTICE == EXEMPTIONS,
3 14 SPECIAL CIRCUMSTANCES.

3 15 1. STRIKE OR LOCKOUT. If a plant closing or mass
3 16 layoff constitutes a strike or constitutes a lockout
3 17 not intended to evade the requirements of this
3 18 chapter, notice is not required to be given by the
3 19 employer. This chapter does not require an employer
3 20 to serve written notice when permanently replacing an
3 21 employee who is deemed to be an economic striker under
3 22 the federal National Labor Relations Act. This Act
3 23 shall not be deemed to validate or invalidate any
3 24 judicial or administrative ruling relating to the
3 25 hiring of permanent replacements for economic strikers
3 26 under the federal National Labor Relations Act.

3 27 2. ROLLING LAYOFFS.

3 28 a. When affected employees will not be terminated
3 29 on the same date, the date of the first individual
3 30 employment loss within the thirty-day notice period
3 31 triggers the notice requirement. An employee's last
3 32 day of employment is considered the date of that
3 33 employee's layoff. The first and subsequent groups of
3 34 terminated employees are entitled to a full thirty
3 35 days' notice.

3 36 b. An employer shall give notice if the number of
3 37 employment losses of two or more actions in any
3 38 ninety-day period triggers the notice requirements in
3 39 section 86C.3 for a plant closing or a mass layoff.
3 40 An employer is not required to give notice if the
3 41 number of employment losses from one action in a
3 42 thirty-day period does not meet the requirements of
3 43 section 86C.3. All employment losses in any
3 44 ninety-day period shall be aggregated to trigger the
3 45 notice requirement unless the employer demonstrates to
3 46 the department that the employment losses during the
3 47 ninety-day period are the result of separate and
3 48 distinct actions and causes.

3 49 3. EXTENDED NOTICE. Additional notice is required
3 50 if the date or schedule of dates of a planned plant
4 1 closing or mass layoff is extended beyond the date or
4 2 the ending date of any period announced in the
4 3 original notice.

4 4 a. If the postponement is for less than thirty
4 5 days, the additional notice shall be given as soon as

4 6 possible to the affected employees or their
4 7 representatives and the department and shall include
4 8 reference to the earlier notice, the date to which the
4 9 planned action is postponed, and the reasons for the
4 10 postponement. The notice shall be given in a manner
4 11 which will provide the information to all affected
4 12 employees.

4 13 b. If the postponement is for more than thirty
4 14 days, the additional notice shall be treated as new
4 15 notice subject to the provisions of section 86C.3.

4 16 4. FALTERING COMPANY. An exception to the
4 17 thirty-day notice applies to plant closings but not to
4 18 mass layoffs if the requirements of this subsection
4 19 are met and the exception shall be narrowly construed.

4 20 a. An employer must have been actively seeking
4 21 capital or business at the time that the thirty-day
4 22 notice would have been required by seeking financing
4 23 or refinancing through the arrangement of loans or the
4 24 issuance of stocks, bonds, or other methods of
4 25 internally generated financing, or by seeking
4 26 additional money, credit, or business through any
4 27 other commercially reasonable method. The employer
4 28 must identify specific actions taken to obtain capital
4 29 or business.

4 30 b. The employer must, at the time notice is
4 31 actually given, provide a statement of explanation for
4 32 reducing the notice period in addition to the other
4 33 notice requirements in section 86C.3.

4 34 c. There must have been a realistic opportunity to
4 35 obtain the financing or business sought.

4 36 d. The financing or business sought must have been
4 37 sufficient, if obtained, to have enabled the employer
4 38 to avoid or postpone the shutdown. The employer must
4 39 be able to objectively demonstrate that the amount of
4 40 capital or the volume of new business sought would
4 41 have enabled the company to keep the facility,
4 42 operating unit, or site open for a reasonable period
4 43 of time.

4 44 e. The employer reasonably and in good faith must
4 45 have believed that giving the required notice would
4 46 have precluded the employer from obtaining the needed
4 47 capital or business. The employer must be able to
4 48 objectively demonstrate that the employer reasonably
4 49 thought that a potential customer or source of
4 50 financing would have been unwilling to provide the new
5 1 business or capital if notice had been given. This
5 2 condition may be satisfied if the employer can show
5 3 that the financing or business source would not choose
5 4 to do business with a troubled company or with a
5 5 company whose workforce would be looking for other
5 6 jobs.

5 7 5. UNFORESEEABLE BUSINESS CIRCUMSTANCE. An
5 8 exception to the thirty-day notice applies to plant
5 9 closings and to mass layoffs if the requirements of
5 10 this subsection are met.

5 11 a. Business circumstances occurred that were not
5 12 reasonably foreseeable at the time that the thirty-day
5 13 notice would have been required.

5 14 b. The employer must, at the time notice is
5 15 actually given, provide a statement of explanation for
5 16 reducing the notice period in addition to the other
5 17 notice requirements in section 86C.3.

5 18 c. An important indicator of a reasonably
5 19 unforeseeable business circumstance is that the
5 20 circumstance is caused by some sudden, dramatic, and
5 21 unexpected action or condition outside the employer's
5 22 control.

5 23 d. The employer must exercise commercially
5 24 reasonable business judgment as would a similarly
5 25 situated employer in predicting the demands of the
5 26 employer's particular market. The employer is not
5 27 required to accurately predict general economic
5 28 conditions that also may affect demand for products or
5 29 services.

5 30 6. NATURAL DISASTER. An exception to the
5 31 thirty-day notice applies to plant closings and to
5 32 mass layoffs if the requirements of this subsection
5 33 are met.

5 34 a. A natural disaster occurred at the time notice
5 35 would have been required.

5 36 b. The employer must, at the time notice is

5 37 actually given, provide a statement of explanation for
5 38 reducing the notice period in addition to the other
5 39 requirements to notice in section 86C.3.
5 40 c. Floods, earthquakes, droughts, storms,
5 41 tornadoes, and similar effects of nature are natural
5 42 disasters under this subsection.
5 43 d. An employer must be able to demonstrate that
5 44 the plant closing or mass layoff is a direct result of
5 45 the natural disaster.
5 46 e. If a plant closing or mass layoff occurs as an
5 47 indirect result of a natural disaster, this exception
5 48 does not apply but the unforeseeable business
5 49 circumstance exception may be applicable.
5 50 Sec. 5. NEW SECTION. 86C.5 ENFORCEMENT AND
6 1 PENALTIES.
6 2 1. The department shall adopt rules pursuant to
6 3 and consistent with chapter 17A regarding
6 4 investigations to determine whether an employer has
6 5 violated any provisions of this chapter. A
6 6 determination by the department that a violation has
6 7 occurred shall be considered final agency action under
6 8 chapter 17A.
6 9 2. An employer who violates the provisions of
6 10 section 86C.3 with respect to the department shall be
6 11 subject to a civil penalty of not more than one
6 12 hundred dollars for each day of the violation. Any
6 13 penalties collected by the department shall be
6 14 forwarded to the treasurer of state and deposited in
6 15 the general fund of the state.
6 16 3. The penalties provided for in this section
6 17 shall be the exclusive remedies for any violation of
6 18 this chapter. Under this chapter, a court shall not
6 19 have authority to enjoin a plant closing or mass
6 20 layoff.>
6 21 #2. Title page, line 2, by striking the words
6 22 <remedies and>.
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6 26 DICK L. DEARDEN
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